

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:11-cr-179

UNITED STATES OF AMERICA

vs.

FRAZIER DERRING

ORDER

THIS MATTER is before the Court upon motion of the defendant to set aside or vacate convictions, pursuant to 28 U.S.C. § 2255, based on a claim of ineffective assistance of counsel. (Doc. No. 40).

The defendant was convicted on December 8, 2011, after a jury trial. (Doc. No. 22: Verdict). He was appointed substitute counsel, (Oral Order, Apr. 6, 2012), after he complained about trial counsel, (Doc. No. 29: Letter), and trial counsel moved to withdraw, (Doc. No. 30). The defendant has not yet been sentenced; thus, his claim under § 2255 is premature. 28 U.S.C. § 2255 (allowing a “prisoner in custody under sentence” to attack sentence collaterally).

IT IS, THEREFORE, ORDERED, that the defendant’s motion to set aside or vacate conviction (Doc. No. 40) is **DENIED** without prejudice to be re-filed after he is sentenced.

Signed: July 17, 2012



Robert J. Conrad, Jr.
Chief United States District Judge

